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FEB 02 2005

**OFFICE OF PETITIONS**

In re Application of :  
Bradley Cain :  
Application No.: 09/457,209 : ON PETITION  
Filed: December 8, 1999 :  
Attorney Docket No: 2204/186 :

This is in response to the petition under 37 CFR 1.137(b) filed November 4, 2004.

The petition under 37 CFR 1.137(b) is dismissed as moot.

The record reflects that a Notice of Appeal was filed on September 30, 2003, and an Appeal Brief was filed on March 2, 2004, with a request for an extension of time within the third month. On May 12, 2004, the USPTO mailed a "Notification of Non-Compliance with 37 CFR 1.192(c)" indicating that the appeal brief filed March 2, 2004, was defective because it did not contain a correct copy of the appealed claims as an appendix. The notice allowed three options for response time allowing petitioner to chose the most favorable option. It appears that the most favorable option allowed for the filing of another appeal brief in triplicate within one month or thirty days from the mailing date of the "Notification of Non-Compliance with 37 CFR 1.192(c)." The notice also allowed for extensions of time pursuant to 37 CFR 1.136(a).

On November 11, 2004, the instant petition was filed along with an appeal brief and the instant petition under 37 CFR 1.137(b) to revive the application. It does not appear, however, that the application is abandoned. The "Notification of Non-Compliance with 37 CFR 1.192(c)" was mailed on May 12, 2004, allowing a shortened period for reply of one month from its mailing date. The appeal brief filed November 4, 2004, is timely with a five-month extension of time pursuant to 37 CFR 1.136(a). Accordingly, the application is not abandoned and no relief can be provided pursuant to 37 CFR 1.137(b). The petition under 37 CFR 1.137(b) is, therefore, moot.

The fee for the petition to revive will be refunded to deposit account 50-2569, and deposit account 50-2569 will charged \$2,080.00 for the fee for the extension of time within the fifth month.

Further correspondence with respect to this matter should be addressed as follows:

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The application file will be directed to the Board of Patent Appeals and Interferences for further processing.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3222.

*Kenya A. McLaughlin*  
Kenya A. McLaughlin  
Petitions Attorney  
Office of Petitions

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**REQUEST FOR PATENT FEE REFUND**

1 Date of Request: <u>2/1/05</u>		2 Serial/Patent # <u>09/457,209</u>		
3 Please refund the following fee(s):		4 PAPER NUMBER	5 DATE FILED	6 AMOUNT
<input type="checkbox"/>	Filing			\$
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<input checked="" type="checkbox"/>	No Fee Due (Explanation):  <i>Petition moot.</i>			
11 REFUND REQUESTED BY:				
TYPED/PRINTED NAME: <u>Kenya McNaughlin</u>		TITLE: <u>Petitions Atty.</u>		
SIGNATURE: <u>Kenya McNaughlin</u>		PHONE: <u>371-072-3222</u>		
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